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Department of
Agriculture

Forest
Service

Pacific
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File Code: 1570-1
Appeal No.: 10-05-00-0003-A215
Date: December 1, 2009

David Tanksley
102 Sage Drive
Bishop, CA 93514

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Dear Mr. Tanksley:

On October 19, 2009, you electronically filed a Notice of Appeal (NOA) pursuant to 36 CFR 215. Jim Upchurch, Forest Supervisor on the Inyo National Forest signed the Record of Decision (ROD) approving the Inyo Motorized Travel Management Project Environmental Impact Statement (FEIS) on August 17, 2009.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the ROD, FEIS, and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The existing National Forest Transportation System (NFTS or system) on the Inyo National Forest is comprised of approximately 1,360 miles of roads, which were incorporated into the NFTS through previous management decisions. In addition to the NFTS roads, there are 1,699 miles of unauthorized routes. Many of these routes have existed on the ground and have been used by the public for a long time; however, they were never added to the National Forest Transportation System (NFTS) through a documented decision process. Many were developed for purposes other than recreation access. Past mining operations, timber sale projects and other access needs led to the creation of many of these routes. Although some have been in use for decades, others were recently created as forest visitors pioneered new routes to access destinations. These unauthorized routes were not necessarily designed to best meet public recreation or access needs and in some cases may adversely affect important forest resources.

There is a need to regulate unmanaged motor vehicle travel by the public through the designation of a system of roads and trails that will provide for recreational access and protect forest resources for the future.



The decision includes the modifications made to Alternative 6 in response to comments received from the public and analyzed in the FEIS. The decision will limit motor vehicle travel by the public to designated National Forest Transportation System (NFTS) roads, trails and areas. To maintain a reasonable level of motorized recreation access and opportunities on the Forest, the decision will:

- Add 122 miles of motorized trails open to all trail vehicles, 20 miles of ATV trails, and 15 miles of motorcycle trails to the National Forest Transportation System (NFTS).
- Add 850 miles of high-clearance native surface roads to the NFTS as roads open to all vehicles (highway-legal and non-highway-legal).
- Allow motorized mixed use (highway-legal mixed with non-highway legal) on 5.6 miles of NFTS passenger car roads contingent on the concurrence of the California Highway Patrol.
- Convert 6 miles of existing NFTS road to motorcycle trail, 8 miles of NFTS road to ATV trail for vehicles 50-inches wide or less, and 159 miles of NFTS road to 4WD motorized trails open to all trail vehicles.
- Close 30 miles of existing NFTS roads to public motor vehicle use and retain 29 miles of those roads for Forest Service administrative use (including motor vehicle use authorized by contract, permit, or other written authorization). One mile of the NFTS will remain closed to all motorized use to resolve private property concerns.

APPEAL REVIEWING OFFICER'S FINDINGS and RECOMMENDATION

Documentation demonstrated compliance with applicable laws, regulations, and policies in light of the appeal issue raised by appellants.

The ARO, Christina Welch, found that the project is an appropriate and reasonable response to direction in the Inyo National Forest Land and Resource Management Plan and is in compliance with the travel management regulations.

The purpose and need for the project were clear.

The Forest Supervisor's decision logic and rationale were clear and well documented.

The Forest Supervisor was responsive to public concerns.

ARO Christina Welch recommended affirmation of the Forest Supervisor's decision on all issues and denial of all requested relief.

DECISION

I agree with the ARO's analysis as presented in the recommendation letter. The issues were similar to the comments made during the comment period. All appeal issues raised have been considered. I affirm the Forest Supervisor's decision to implement the selected alternative (Modified 6). I deny all requested relief.

The project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)). My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Angela V. Coleman
ANGELA V. COLEMAN
Appeal Deciding Officer
Deputy Regional Forester

Enclosure



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File Code: 1570-1

Date: November 30, 2009

Subject: Inyo National Forest Motorized Travel Management Project
Appeal No. 10-05-00-0003-A215
Inyo National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by David Tanksley, appealing the Inyo National Forest Supervisor, Jim Upchurch's Record of Decision (ROD) for the Inyo National Forest Motorized Travel Management Project Environmental Impact Statement (EIS). The decision was signed on August 17, 2009 and the legal notice of the decision was published on September 3, 2009.

DECISION BEING APPEALED

The 2005 Travel Management Rule was developed in response to increased use of the National Forests by motorized vehicles and the effects of that use on ecological, physical, cultural, and social resources. From 1982 to 2000, the number of people driving off-highway motor vehicles in the United States more than doubled (70 Fed. Reg. 68264 – November 9, 2005). The Inyo National Forest (INF or Forest) is experiencing a similar growth in the use of off-highway motorized vehicles and lacks a clearly defined, designated system of roads and trails designed to best meet the recreational needs of the public.

The existing National Forest Transportation System (NFTS or system) on the Inyo National Forest is comprised of approximately 1,360 miles of roads, which were incorporated into the NFTS through previous management decisions. In addition to the NFTS roads, there are 1,699 miles of unauthorized routes. Many of these routes have existed on the ground and have been used by the public for a long time; however, they were never added to the National Forest Transportation System (NFTS) through a documented decision process. Many were developed for purposes other than recreation access. Past mining operations, timber sale projects and other access needs led to the creation of many of these routes. Although some have been in use for decades, others were recently created as forest visitors pioneered new routes to access destinations. These unauthorized routes were not necessarily designed to best meet public recreation or access needs and in some cases may adversely affect important forest resources.

There is a need to regulate unmanaged motor vehicle travel by the public through the designation of a system of roads and trails that will provide for recreational access and protect forest resources for the future. The following key points were identified as the underlying need for taking this action at this time:

- There is a need to regulate motor vehicle travel by the public. The proliferation of unplanned, unauthorized, non-sustainable roads, trails and areas adversely affects the



environment. The 2005 Travel Management Regulations, 36 CFR Section 212, Subpart B, is intended to prevent resource damage caused by unmanaged motorized travel by the public.

- There is a need for changes to the transportation system to provide a diversity of motorized recreation opportunities and to provide access to dispersed recreation opportunities, including limited changes to vehicle classes on NFTS routes and whether to add unauthorized routes to the NFTS as roads or motorized trails. If unauthorized routes are not added to the NFTS and designated, motor vehicle use on these routes would be prohibited (36 CFR 261.13) and motorized access to many dispersed recreation activities would be precluded.

The decision includes the modifications made to Alternative 6 in response to comments received from the public and analyzed in the FEIS. The decision will limit motor vehicle travel by the public to designated National Forest Transportation System (NFTS) roads, trails and areas. To maintain a reasonable level of motorized recreation access and opportunities on the Forest, the decision will:

- Add 122 miles of motorized trails open to all trail vehicles, 20 miles of ATV trails, and 15 miles of motorcycle trails to the National Forest Transportation System (NFTS).
- Add 850 miles of high-clearance native surface roads to the NFTS as roads open to all vehicles (highway-legal and non-highway-legal).
- Allow motorized mixed use (highway-legal mixed with non-highway legal) on 5.6 miles of NFTS passenger car roads contingent on the concurrence of the California Highway Patrol.
- Convert 6 miles of existing NFTS road to motorcycle trail, 8 miles of NFTS road to ATV trail for vehicles 50-inches wide or less, and 159 miles of NFTS road to 4WD motorized trails open to all trail vehicles.
- Close 30 miles of existing NFTS roads to public motor vehicle use and retain 29 miles of those roads for Forest Service administrative use (including motor vehicle use authorized by contract, permit, or other written authorization). One mile of the NFTS will remain closed to all motorized use to resolve private property concerns.

APPEAL SUMMARY

The Inyo National Forest Travel Management Project was listed in the Schedule of Proposed Actions. Public scoping for the INF Travel Management EIS began on October 1, 2007 with publication of the Notice of Intent to Prepare an Environmental Impact Statement in the *Federal Register*. That notice identified the purpose and need for the action, summarized the Proposed Action, provided information about the process, and initiated a public comment period scheduled to end on November 15, 2007. In response to public and local government requests, this period was extended by an additional 30 days. The public was also notified of the scoping period

through news releases to the local media, the INF website, and direct mailings to hundreds of interested individuals, agencies, tribes, and organizations. The Forest regularly presented project updates to County Boards of Supervisors, the Mammoth Tourism and Recreation Commission, and other groups as requested. The Forest Supervisor worked with County road engineers and planners in Mono, Mineral, Esmeralda, and Inyo Counties to determine the specific roads on NFS lands that are managed by the various counties. Such roads are displayed uniquely on maps in the EIS.

During the scoping period three public meetings were held in Bishop, Mammoth Lakes, and Ridgecrest. The meetings provided an overview of the need for the Proposed Action and the NEPA process. In addition to these meetings, the public was invited to two open houses at the Supervisor's Office in Bishop and one at the Ranger Station in Lone Pine. More than 100 people attended the six public meetings. Participants were invited to review materials, and participate in a question and answer period. The questions and answers from those meetings were made available on the INF website. All attendees were encouraged to participate in the scoping process by submitting their comments in writing. The Forest received comments from almost 400 individuals, organizations, and agencies during the scoping period.

The legal notice of decision was published on September 3, 2009; the deadline for filing appeals was October 19, 2009. The current appeal was filed on October 19, 2009 and is timely.

The Forest Supervisor had a meeting with the appellant November 2, 2009. No issues were resolved.

ISSUES AND RESPONSES

Issue 1: The Forest failed to address my comments on the draft Inyo Motorized Travel Management Project. (Appeal, pg. 1)

Response: The Forest Service followed a systematic process of carefully numbering, reading, coding and logging all comments. When an individual raised multiple concerns within the same letter, each unique comment was numbered and tracked separately. Each comment was assigned a unique tracking number and coded by subject or topic (FEIS, Appendix E, pg. 1).

The appellant's comment letter was assigned the number E-00129. The appellant's assigned number is associated with comments PC 192, 191, 211, 165, 252, 278, 86, 5, 2, and 3 respectively in Appendix E on pages E-11, E-13, E-18, E-32, E-36, E-44, E-131, E-133, E-134, and E-135.

I find that the Forest Supervisor adequately responded to issues raised by the appellant in his comment letter on the draft Inyo Motorized Travel Management Project.

Issue 2: The Project failed to analyze or even show, existing roads and county highways that access private property, residences, active mining operations and mineral operations that are important for this county and national security. (Appeal, pp. 1, 6-10)

Response: Although the travel management regulations do not require a complete inventory to move forward with designation of known existing routes, the Forest conducted an exhaustive survey of unauthorized routes between 2003 and 2005, using field crews in trail vehicles with GPS units. Due to the difficulty of finding every route—especially those lightly traveled, overgrown, or used by smaller trail vehicles, such as motorcycles—a few existing unauthorized routes may have been missed. The Forest requested input from the public about missing routes before the inventory was finalized, and received only limited additional information at that time. If the public had information about missing routes, this would have been the best time to bring them forward, so that they could be added to the inventory and analyzed for motorized use (FEIS, Appendix E, pg. 8).

There are other reasons why routes may not have appeared on maps or inventories. Routes were not inventoried if private property owners gated or posted no trespassing signs. While a route may continue beyond the private property, this route is no longer available to the public (including the property owner) on NFS land, unless the property owner agrees to allow access and the NFS routes are analyzed for inclusion in the transportation system. Routes that were revegetating due to lack of use were also not inventoried by field crews (FEIS, Appendix E, pg. 8).

Any activity associated with contract, permit, lease or other written authorization is exempt from designation under the Travel Management Rule (36 CFR 212.51 (a) (8)) and is not affected by this decision (e.g., fuelwood permits, mining activity, etc.). Such actions are subject to separate project-level NEPA analysis (FEIS, pg. 1-6). Existing County roads are not under Forest Service jurisdiction, were not part of the project, and so were not analyzed.

In Appendix A, Table A-1 lists all proposed road and trail additions to the National Forest Transportation System (NFTS), including vehicle class, and mitigations prescribed for any segment. Table A-2 lists proposed changes to the existing NFTS, including vehicles class changes, administrative use roads, and roads analyzed for Motorized Mixed Use.

I find that the Forest Supervisor adequately displayed unauthorized roads and analyzed the effects of those existing unauthorized roads that the Forest Service has jurisdiction over.

Issue 3: The Forest intends to manage R.S. 2477 roads through this project and exercise dominion over them. This project is based on the 2005 Travel management Rule, which itself relies on Executive Order 11644 and Executive Order 11989 for its authority. No Act of Congress supports the Rule or the Project. The Project is illegal. (Appeal, pp. 1-4)

Response: The purpose of the decision under appeal is to implement the prohibition on cross-country travel contained in Subpart B of the travel management regulations and to identify which user-created or unauthorized routes, if any, should be added to the NFTS and designated on the Motor Vehicle Use Map (MVUM).

The regulations define NFS roads and trails as those roads and trails which the Forest Service determines are within or adjacent to a National Forest and necessary for protection, administration and utilization of the NFS, and which are not authorized by a legally documented

right-of-way held by a public road authority (36 CFR 212.1). The decision of the Forest Service to designate, or not to designate, a road or trail for motor vehicle use does not affect the ability to validate any claims under R.S. 2477, or any other claims for public highway rights-of-way on NFS lands. The decision in no way precludes or forecloses the ability of claimants to assert and carry their burden of proof in an appropriate forum for any such claims that they may assert.

Therefore, Forest Service designation or non-designation of an NFS road or trail does not reflect a determination by the Forest Service regarding the potential validity of any claim under R.S. 2477. Rather, designation or non-designation of an NFS road or trail merely indicates that the Forest Service has determined there is no known legal documentation of a public highway right-of-way for that road or trail held by a public road agency. Should that documentation be produced, the exception under the travel management rule for legally documented public rights-of-way would apply to the route. Nothing in this decision prejudices the ability of a public road authority to assert a claim for an R.S. 2477 right-of-way. Specifically, nothing in this decision affects the ability of a public road authority to obtain or produce legal documentation of a claimed right-of-way for a road or trail on NFS lands that is recognized under federal law, and assume management responsibility for the road or trail. Moreover, this decision will not result in obliteration of any existing roads or trails, and will not affect non-motorized uses of roads and trails in the interim.

The authority to promulgate the travel management regulations, 36 C.F.R. § 212.50 (Subpart B), derives from 7 U.S.C. 1011(f), 16 U.S.C. 551, and Executive Orders 11644 and 11989.

I find that this decision does not affect the validity of potential R.S. 2477 right-of-way claims, and follows federal regulations.

Issue 4: Cumulative Impact of not recognizing R.S. 2477 is not addressed. (Appeal, pg. 4)

Response: For purposes of the travel management regulations, the Forest Supervisor was required to evaluate whether or not a road or trail that otherwise met the definition of an NFS road or trail was authorized by a legally documented right-of-way held by a public road authority. The Forest Supervisor was not required to determine the validity of public highway right-of-way claims made by the County. The analysis completed by the Forest Supervisor evaluated the effects of the proposed designations for motor vehicle uses and the resulting prohibition or restrictions of uses. Since the analysis clearly depicts the motor vehicle uses and prohibitions that will result from the decision, the decision does not in any way alter or affect any right-of-way claims that may be made in the future, and the Forest Supervisor made all determinations required under the regulations, the Forest Supervisor's analysis was sufficient.

I find that the Forest Supervisor was not required to analyze the cumulative impact of not recognizing R.S. 2477 roads.

Issue 5: This project violates NEPA by not adequately analyzing property values and property rights that might be affected by this decision, such as R.S. 2477 right-of ways which the county has jurisdiction over. (Appeal, pp. 4-5)

Response: This issue was not raised by the appellant in his scoping comments or his comments on the draft EIS.

As discussed in Issue 2, any activity associated with contract, permit, lease or other written authorization is exempt from designation under the Travel Management Rule (36 CFR 212.51 (a) (8)) and is not part of the proposal (e.g., fuelwood permits, mining activity, etc.). Also routes were not inventoried if private property owners gated or posted no trespassing signs on their roads so these roads also were not part of the proposal.

Nothing in this decision prejudices the ability of a public road authority to assert a claim for an R.S. 2477 right-of-way. Specifically, nothing in this decision affects the ability of a public road authority to obtain or produce legal documentation of a claimed right-of-way for a road or trail on NFS lands that is recognized under federal law, and assume management responsibility for the road or trail.

I find that since this decision does not affect the right of the county to claim R.S. 2477 rights-of-way and private roads and permits are not part of the proposal, there is not a need for the project to have analyzed property rights and values.

Issue 6: The Forest must apply for a permit from Inyo County Planning Department prior to working on any County highways and must apply to Inyo County Board of Supervisors for them to abandon each road prior to closure. As part of this process the Highway Code and the California Environmental Quality Act (CEQA) must be compiled with. (Appeal, pp. 10-11)

Response: The Forest Supervisor worked with County road engineers and planners in Mono, Mineral, Esmeralda, and Inyo Counties to determine the specific roads on NFS lands that are managed by the various counties. Such roads are displayed uniquely on the EIS maps, and as these are not under Forest Service management, they are not analyzed, nor are any changes in access proposed. Routes on NFS lands that are not part of this defined system of County roads or State and Federal highways are subject to management by the Forest Service and were analyzed in this EIS (FEIS, Appendix E, pg. 13).

The mere presence of a user-created or other unauthorized route on the ground in a given county does not automatically grant it system status for that county or for the Forest Service. Pursuant to 36 CFR 212.51, the Forest Service must follow specific Travel Management procedures through NEPA before adding new roads or trails to the NFTS on NFS land. Therefore, making decisions that exclude some unauthorized routes does not trigger a federal action to remove or close them from the NFTS (FEIS, Appendix E, pg. 13).

I find that the Forest Supervisor's decision on the Inyo Travel Management Project does not trigger the need to obtain permits from Inyo County Planning Commission or comply with CEQA.

Relief Requested: The appellant requests:

- 1) That the Forest comply with P.L. 104-208, & 108, void the current Project, and postpone any further planning until authorized by Congress.
- 2) That the Forest conduct an honest evaluation of the impact of this project on the recognition, management, and validity of R.S. 2477 rights-of-ways.
- 3) That the Forest acknowledge that NEPA analysis cannot be conducted until a property rights (including R.S. 2477) analysis has been conducted on every road being evaluated as part of the Forest transportation planning.
- 4) That the Forest conduct a new NEPA analysis beginning with showing all roads throughout the National Forest.
- 5) That the Forest evaluate the economic and national security impacts of closing these roads.
- 6) Requests that the FBI be contacted to determine if there was any willful misrepresentation in not showing the full extent of existing roads.
- 7) Requests that Inyo County be contacted to determine if any County roads have been mislabeled as unauthorized. If so then the Project needs to be redone with these County highways properly labeled.
- 8) Requests that the Forest coordinate with Inyo County to determine if any roads are appropriate for closure and work through the correct application process.
- 9) Requests that the Forest Coordinate with the Inyo County to determine if there are feasible alternatives to manage the increase in use of the National Forests by motorized vehicles without eliminating access.

FINDINGS

Clarity of the Decision and Rationale -- The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. His reasons for selecting the Modified Alternative 6 are logical and responsive and consistent with direction contained in the Mendocino National Forest Land and Resource Management Plan. The purpose of the proposal as stated above is clear and the benefits are displayed.

Effectiveness of Public Participation Activities and Use of Comments -- Public participation was adequate and well documented. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, hosted public meetings, and distributed draft and final EISs to interested groups and individuals. The Forest Supervisor worked with County road engineers and planners in Mono, Mineral, Esmeralda, and Inyo Counties to determine the specific roads on NFS lands that are managed by the various counties. Such roads

are displayed uniquely on maps in the EIS. Responses to the comments received are detailed and included as part of the EIS. The decision of the Forest Supervisor indicates he considered and responded to public input.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the appellant's objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision be affirmed on all issues. I recommend that the Appellants' requested relief be denied on all issues.

/s/ Christina M. Welch

CHRISTINA M. WELCH
Appeal Reviewing Officer
Deputy Forest Supervisor, Stanisluas National Forest